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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 10725 of 2023

Animesh Podder
Vs.
UCO Bank & Ors.

Mr. Om Narayan Rai,
Ms. Deblina Lahiri,
Mr. Mrinmoy Chatterjee,
Ms. Piyas Chowdhury,
Mr. Bias Banerjee
…for the petitioners

Mr. Sourjya Roy
…for the UCO Bank

1. The petitioner is a purchaser of a property from the respondent-Bank. Initially, there was a private treaty, which culminated in an auction sale where the petitioner came out successful and sale certificate was issued in favour of the petitioner on March 30, 2013.

2. In the sale certificate, it was recorded that the sale was made free from all encumbrances known to the secured creditor listed thereinbelow on deposit of the money demanded by the undersigned. Notably, no encumbrance was listed under the same. Hence, the impression given by the Bank was that the property was being sold free from all encumbrances known to the Bank.

3. Subsequently, however, the petitioner came to know that the sale had been effected in the teeth of a subsisting injunction order in connection with an application pending before the concerned Debts Recovery Tribunal (DRT) under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 at the instance of the borrower.

4. The petitioner sought possession of the property which, according to the petitioner, was not handed over by the Bank. The sale certificate between the Bank and the petitioner was ultimately registered in the year 2019. At the juncture of registration, the petitioner was given an impression by the Bank that the SARFAESI proceeding had been dropped in view of the then existent legal position.

5. There were several litigations thereafter. A bunch of matters went up to the Supreme Court and, ultimately, the SARFAESI application of the borrower was revived by the DRT along with a status quo order.

6. Learned counsel for the petitioner contends that the petitioner, after waiting inordinately for being handed over the possession of the property, is still without possession.

7. That apart, the title, which was purportedly passed in favour of the petitioner by virtue of the sale certificate, is still precarious in view of the pending litigation.

8. Learned counsel for the petitioner also submits that a previous writ petition filed by the petitioner primarily for the reliefs of registration of the sale certificate and handing over of possession and/or compensation met with a dismissal for default. However, the present prayer is restricted to refund of the consideration amount paid by the petitioner and cancellation of the sale certificate.

9. Learned counsel for the petitioner submits that in view of the fraud practiced by the respondent-Bank, the writ court can also set aside the sale certificate, which, in any event, did not operate to pass any valid title in favour of the petitioner.

10. Learned counsel for the respondent-Bank places reliance on the language of the sale certificate which includes a line that the Authorised Officer of the Bank had acknowledged the receipt of sale price in full and handed over the delivery of possession of the scheduled property. Also, in the auction purchase notice, which is annexed to the writ petition, it was indicated that the sale was to be on ‘as is where is basis’, for which the petitioner

cannot avoid liability or knowledge regarding the pending litigation and subsisting injunction.

11. A proper perusal of the sale certificate shows that the sentence relied on by the Bank cannot be construed in favour of the Bank. The said sentence merely records the acknowledgement on the part of the Authorised Officer of the Bank, and not the petitioner, that the entire consideration was paid in full and that the delivery of possession of the scheduled property was made over to the petitioner. The said clause, as rightly argued by the petitioner, is a standard clause in all such sale certificates and cannot be construed to be conclusive as regards possession having been handed over to the petitioner.

12. That apart, the orders of the DRT show that the sale had been effected by the Bank squarely in the teeth of a subsisting injunction order, which restrained the Bank from carrying out such sale.

13. Subsequently, the DRT matters were revived and the DRT directed status quo to be maintained with regard to the property. The petitioner, on the petitioner's prayer, had also been impleaded in the said matters, thereby being bound by the order of status quo as well.

14. Taking the Bank’s case to its maximum in favour of the Bank, even if any possession was

handed over to the petitioner, the same is not unqualified but, at best, can be labelled as precarious and irregular.

15. It has been held time and again by different courts including the Supreme Court that transfer in the teeth of any injunction application, although not illegal as such, operate as irregular transfers. The petitioner always runs the risk of the entire sale along with the possession, even if it had been handed over to the petitioner, to be reversed in favour of the borrower, due to pendency of the SARFAESI proceeding and as the subsisting status quo order looms large over the head of the petitioner.

16. Moreover, despite an illusory title having been passed through the sale certificate, the petitioner cannot deal with the property in view of the long subsisting status quo order, which takes away the lion's share of the incidents of the ownership, thereby denuding the "sale" effected by the Bank of the character of a full-fledged sale as such.

17. The transfer in favour of the petitioner carried out by the Bank is ex facie fraudulent and tainted with misrepresentation. The 'as is where is basis' clause of the sale notice is neither here nor there, since the petitioner was not a party to the SARFAESI proceeding at the relevant juncture and,

thus, was not supposed to know about such subsisting injunction order at all.

18. Even today, the petitioner stands the risk of the sale certificate being cancelled, the purported sale being set aside and possession, if any, to be directed to be returned by the petitioner.

19. Of course, the Bank has not been able to prove independently, apart from the stray sentence in the sale certificate, that possession was actually handed over in favour of the petitioner as well.

20. In view of such circumstances, the petitioner cannot be compelled to carry on with the burden of the sale certificate, without any proper right, title or clear ownership of the property having passed by virtue of the said transaction.

21. In view of the outright fraud and suppression of material facts practiced by the UCO Bank against the petitioner, the Bank is duty-bound to immediately refund the entire consideration amount to the petitioner.

22. Since the petitioner had participated in the interregnum in the registration and since the petitioner's previous writ petition had failed as dismissed for default, this Court is not inclined, however, to impose interest on the entire amount from the date of the transfer.

23. However, for the extreme harassment caused to the petitioner, the Bank is definitely liable to pay exemplary costs to the petitioner.

24. In such view of the matter, W.P.A. No. 10725 of 2023 is allowed on contest, thereby setting aside and quashing the sale certificate dated March 30, 2013 executed by the respondent-UCO Bank in favour of the petitioner (Annexure A-7 at page 35 of the writ petition) on the ground of fraud and misrepresentation on the part of the Bank. The Bank shall refund the entire consideration amount of Rs.22,10,000/- to the petitioner within a fortnight from date.

25. In the event of failure by the Bank to do so, interest shall be paid by the Bank on the entire amount of consideration from the day immediately after the expiry of such fortnight at the rate of 12 percent per annum till the date such payment is made to the petitioner.

26. Over and above the said amount, the Bank shall pay costs of Rs.1,00,000/- (Rupees One Lakh) to the petitioner also within a fortnight from date for the extreme harassment caused to the petitioner due to the fraudulent action of the respondent-Bank.

27. The parties shall act on the server copy of this order for the purpose of compliance of the same.

28. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

Sabyasachi Bhattacharyya, J.